



The Taft Institute

FOR GOVERNMENT & CIVIC EDUCATION

Making Democracy Work

EXPANDING AND IMPROVING POLITICAL PARTICIPATION IN THE U.S. SINCE 1961

THE TAFT INSTITUTE 2025 ANNUAL VIRTUAL SEMINAR FOR TEACHERS

Teaching the Current Moment in America: Is the Constitution Threatened?

Wednesday, April 9, 2025
6:00-8:00PM EST

With Professor Emeritus Michael Alan Krasner

Overview

- ❖ What is a constitutional crisis?
- ❖ Constitutional Principles
 - Checks and Balances
 - Democracy, aka, Popular Sovereignty
 - Protection of the Individual—Civil Liberties and Civil Rights
 - Rule of Law
- ❖ Case Studies
 - Birthright citizenship
 - Mass Deportation
 - Free speech

Constitutional Crisis

- ❖ Threat to the existing system
- ❖ Big change in power relations
 - One branch gains a lot of power
 - Others lose power
 - Checks and Balances weakened
- ❖ Big change in rules under which the government operates
 - Rule of law weakened or lost entirely
 - Arbitrary, personal power replaces power based on law

The One Point of Agreement

- ◆ Nearly every expert agrees that if the President defies a court order, *this is a Constitutional Crisis*:
 - Threatens the Constitution's distribution of power (Checks and Balances)
 - Threatens the rule of law

Beyond That...

- ❖ Disagreement
- ❖ Wide range of opinion about what is going on now
- ❖ Many see it simply as the assertion of Presidential power, but not a crisis.
- ❖ At conclusion, another view

Checks and Balances

- ❖ “Separation of Powers?”
- ❖ Better to say: “Separate Institutions that Share Power” (Richard Neustadt)
- ❖ Why?

How Checks and Balances Work

- ❖ Totally separated powers can't check and balance
- ❖ Have to be shared
 - For example: Law-Making
- ❖ If the Congress could do it all on its own, no check or balance
- ❖ But if it's shared – Congress, the President, and the Courts – then you have checks and balances as follows...

Checks and Balances: Law Making

- ❖ Congress can pass a law (majority vote in both Houses).
- ❖ President can veto—refuse to sign and return the bill with reasons.
- ❖ Congress can override (two-thirds in both Houses).
- ❖ Supreme Court can declare a law passed by the Congress and signed by the President unconstitutional.
- ❖ Why do we have checks and balances?

Framers' Concerns

- ❖ As British colonists, they objected to rights violated by the King:
 - See him as a tyrant
 - Fear another one in the new world
- ❖ They also feared the majority:
 - Feared the mass of the people would violate the rights of minorities
 - In practice – the many who are poor take property and liberty from the few who are rich

Result: Fear of Concentrated Power

- ❖ How to prevent it?
- ❖ Can't change human nature.
- ❖ People are ambitious and selfish.
- ❖ Therefore, **Divide Power.**
- ❖ Turn **ambition** against **ambition:**
 - The ambition of a Senator or a Congressperson checks the ambition of the President.

Personal/Institutional Motives

- ❖ Why would Senators agree to have their power reduced?
- ❖ But also the system sets them up to have interests that conflict with others

Interests and Constituencies

❖ Senators

- Six-year terms
- One-third elected every two years
- Elected from states

❖ House of Representatives

- Two-year terms
- All at once from districts

❖ President

- Four-year term
- National election, though indirect (Electoral College)

❖ Differences in *constituencies* and *terms* produce differences in *interests* and *outlooks*

Problem?

- ❖ Checks the *good* as well as the *bad*.
- ❖ Hard to get anything done.
- ❖ Can be hard for the majority to make the government respond.
- ❖ Hard to be small “d” democratic?
- ❖ How to overcome?

Big Electoral Majorities – Trifectas

- ❖ When the same party controls both Houses of Congress and the Presidency
- ❖ Democratic Party in the 1930s
- ❖ Response to the Great Depression
- ❖ FDR in the White House
- ❖ Big Democratic majorities in the Congress
- ❖ New Deal program passes
 - Direct aid for individuals
 - Greatly increased regulation of corporations
 - Greatly increased support for labor unions

Result: Creation of the Middle Class

- ❖ Big gains for working people
- ❖ Income and wealth gaps narrow
- ❖ Standards of living go up
- ❖ Changes the political economy

Current Administration

- ❖ Critics say it's different
- ❖ No huge electoral victories
- ❖ Trump gets less than 50% of the popular vote
- ❖ Only about 225,000 vote margin in the battleground states
- ❖ Very narrow majorities in the House and Senate

Why Do Congressional Republicans Acquiesce?

- ❖ Trump and Musk laying waste to agencies Congress created and funded.
- ❖ Why isn't the Congress defending its institutional power?
- ❖ Political fear: big money, MAGA voters
- ❖ Physical fear: threats, attacks

Political Fear

- ❖ A strong primary opponent
- ❖ Big money
 - Funded by Musk (\$220-\$300 billion)
- ❖ Trump's MAGA following
 - Opponent supported by MAGA loyalists in the primaries
- ❖ Not all Republican voters (60-70%), but...
- ❖ The vast majority of Republicans voters in the primaries.

Physical Fear

- ❖ Trump brings violence into the political system
- ❖ People named by Trump as “enemies”
- ❖ Get threatened physically
 - Their families as well
- ❖ Reporters like Megan Kelly resort to 24/7 security
 - Not everybody can afford that
- ❖ Why would you put yourself and your family at risk?

No Check or Balance from the Congress

- ❖ Institutional/Personal Motivations are forgotten
- ❖ Ambition is not checking ambition
- ❖ Only Trump (and Musk's) ambition is working
- ❖ But what about the Supreme Court?

Trump's Power and Supreme Court

- ❖ Thanks to:
 - Stonewalling Obama's attempt to appoint Merrick Garland
 - The Supreme Court giving the 2000 election to George W. Bush
 - The hasty confirmation of Amy Comey Barrett
- ❖ The Supreme Court now has a six-person majority...
- ❖ That gave Trump extraordinary immunity/power.

Supreme Court: Minority Rule

- ❖ This six-person majority represents a minority:
 - Five of the justices appointed by presidents who lost the popular vote, Bush 2 and Trump.
 - And approved by a majority of Senators who represent a minority of the people – Senators from low population states.

Supreme Court: Extremist Decisions

- ❖ **And made extremist decisions even before Trump**
- ❖ **Citizens United – Corporations are people with first amendment rights**
 - Can give unlimited amounts of money in political campaigns.
- ❖ **Shelby v. Holder – guts Voting Rights Act of 1965**
 - Allows voter suppression especially of minorities
- ❖ **Chevron decision – guts EPA's ability to regulate**
 - Threatens the Administrative state generally
- ❖ **Dobbs – overturns Roe v. Wade**
 - Allows abortion to be outlawed

Supreme Court: Check And Balance Trump?

- ❖ Maybe on the most extreme actions
- ❖ Maybe won't overturn birthright citizenship
- ❖ Very plain in the Constitution – 14th Amendment
- ❖ Precedents and discussion very one-sided in favor of birthright citizenship
- ❖ But can't rule out entirely with this Court the possibility of siding with the president

The Bigger Issues

- ❖ More likely, oppose president on this (THIS WHAT?)
- ❖ To look moderate when conceding on nearly everything else
- ❖ Presidential power over regulatory agencies
- ❖ Presidential power to dismantle agencies created and funded by the Congress
- ❖ Presidential power to deport asylum seekers and people on student visas and green card holders
- ❖ Presidential power to threaten and coerce universities, law firms, and other big institutions in civil society

No Serious Check from the Court

- ◆ No check that really matters

The Next Three Principles

- ❖ The Rule of Law, Popular Sovereignty, Individual Rights
- ❖ These go together
- ❖ Each reinforces and enables the other two
- ❖ Take them one at a time, but keep this in mind

Democracy, Popular Sovereignty, Of...By...For

- ❖ Noted that Checks and Balances can thwart the people
- ❖ Also, true that amendments generally increase the people's power
- ❖ And extend the right to vote
 - Blacks
 - Women
 - Those over 18

How the Constitution Has Evolved

- ❖ The direction is toward the ideal expressed by Lincoln in the Gettysburg Address:
 - Government of the people, by the people, for the people
- ❖ A responsive government
- ❖ Responsive to the majority
- ❖ Small “d” democratic

Connects to Civil Liberties

❖ But to have that – needs the First Amendment Rights

➤ Speech

➤ Association

➤ Assembly

➤ Press

Speech

- ❖ People need to be able to say what they think
- ❖ To criticize the government
- ❖ TO HEAR the speech and criticisms of others
- ❖ So, THEY can figure out what they think and what they want.

The Press

- ❖ When it's doing its job, the press (media) is vital to the process of FREE SPEECH
- ❖ Supposed to be a watchdog
- ❖ Alerting the people to abuses
- ❖ Helping to hold the government accountable
- ❖ Informing on current issues
- ❖ Basis for reasoned opinion

Protest

- ❖ “The right of the people peaceably to assemble and petition for a redress of grievances” - First Amendment
- ❖ To see and be seen in public
- ❖ To impress the government and other citizens with the strength of their feelings and desires
 - April 5th, 2025

Rule of Law

- ❖ The law is supposed to apply equally to all!
 - The government is not supposed to act outside the law
 - In particular, the government is not supposed to act against critics unless they have broken the law.
- ❖ The government is supposed to act openly – ACCOUNTABILITY!
 - Those working for the government are supposed to identify themselves and their agencies and the legal authority under which they are acting.

Arrests of Khalil, Ozturk, and others

- ❖ Though not citizens, they are protected by the First Amendment
- ❖ The rationale for acting against them is thin, at best
- ❖ See the article by Charlie Savage
- ❖ The charges of antisemitism are unproven, apparently untrue
- ❖ Even if true, problematic in terms of First Amendment
- ❖ Hateful speech is protected
- ❖ Though there is a history of abuse, especially in time of war

The Manner of the Arrests – The Rule of Law

- ❖ Done by plainclothes officers
- ❖ In Unmarked cars
- ❖ Who refuse to give their names
- ❖ And refuse to say what agency they are from
- ❖ And refuse to say why the person is being arrested
- ❖ And done with no warning
- ❖ No notification that a student visa has been revoked
- ❖ **Prevents accountability**
- ❖ **As well as violating simple humanity**

The Dangers

- ❖ If people cannot express themselves freely
- ❖ If people cannot get the crucial facts from the media
- ❖ If people can be punished for dissenting from official policy
- ❖ If protest can be suppressed because it conflicts with the desires of high officials
- ❖ If the government's actions are done in a way that obscures accountability
- ❖ Then democracy and the rule of law have been seriously damaged, if not entirely destroyed.

The Rule of Law – Mass Deportations

- ❖ Similar points apply here
- ❖ What is the government's legal justification for its actions?
- ❖ The law invoked had previously been applied in times of war
- ❖ The judge ordered the process reversed
- ❖ Planes in flight supposed to turn around
- ❖ Plane on the ground supposed to stay there
- ❖ The opposite happens
- ❖ Did the Executive Branch defy a court order?

The Legal Rationale

- ❖ Alien Enemies Act
- ❖ 18th century
- ❖ Considered previously to apply in times of war

How the Government Acted

- ❖ Rounding up people based on their tattoos
- ❖ Supposed link to Venezuelan gang
- ❖ Denying asylum seekers hearings
- ❖ Apparently defying a court order to halt flights or turn them around
- ❖ Deporting at least one person who had protective status and stonewalling the effort to bring him back (Abrego Garcia)

Overview

- ◆ How to think about the Trump Administration overall:
 - Masha Gessen, citing Balint Magyar, *Surviving Autocracy*
 - “Mafia State”
 - Jonathan Rauch (*The Atlantic*) citing Stephen Hanson and Jeffrey Epstein, *The Assault on the State*.
 - “Patrimonialism”

Personal Rule

- ❖ Both ideas emphasize the personal power of the leader
- ❖ Who dispenses money, power, and other favors
- ❖ As he pleases – enhance his power and his fortune
- ❖ Doing away with agencies that have their own agenda and expertise
- ❖ Using state power to intimidate critics; spread fear
- ❖ Attacking potential opponents in civil society

Examples

- ❖ Attacks on the media
- ❖ Attacks on universities
- ❖ Attacks on law firms
- ❖ Those already noted
 - Punishing student critics
 - Mass deportations

Tariffs??

- ❖ Large, indiscriminate tariffs
- ❖ Widely criticized by experts
- ❖ “Doesn’t understand the economy”
- ❖ ”Doesn’t understand international trade”
- ❖ “No rhyme or reason”

Missing the Point?

- ❖ Tariffs as personal weapon
- ❖ Not as policy
- ❖ Not to reform the economy
- ❖ But to gain a power advantage...
- ❖ To force corporations or foreign governments
- ❖ To make concessions
- ❖ To come to the leader in a weakened position

If True....

- ❖ If this interpretation is accurate,
- ❖ If Trump succeeds,
- ❖ If the mass deportations continue,
- ❖ If the student arrests and deportations or detainments are upheld
- ❖ If big institutions in civil society (media, universities, law firms, corporations) continue to make big concessions,
- ❖ If the destruction of agencies, impoundment of funds, and many other increases of presidential power continue unchecked...
- ❖ Then the balance of power will have shifted substantially to the President, eroding constitutional principles.

Remember: Erosion of Democratic Norms

- ❖ Those who attended last year should, unfortunately, recognize these trends (as Michelle Sorise pointed out)
- ❖ Examples of what Ziblatt and Levitsky call “Indicators of Authoritarian Behavior”
 - Call to Violence
 - Threats against rivals in civil society
 - Restriction of civil liberties, and many more

Civil Liberties, Rule of Law, Democracy

- ❖ All of the principles with which we began...
 - Checks and Balances
 - Civil Liberties
 - Rule of Law
 - Democracy (small “d”)
- ❖ ...will have been substantially weakened or destroyed.

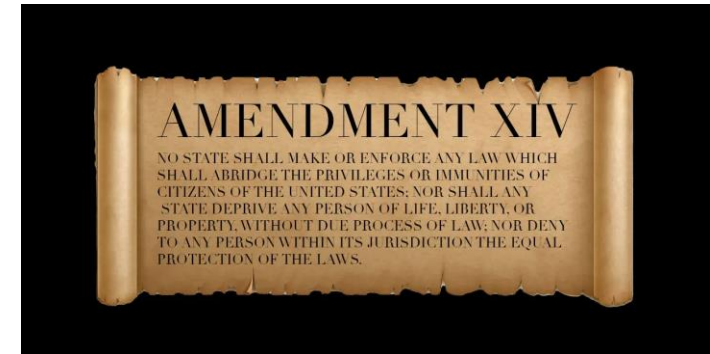
So, YES...we are smack dab in the middle of a constitutional crisis!

Creating Lessons: Are We In a Constitutional Crisis?

- ❖ We will split out into breakout rooms so participants can work in groups. The year groups are randomized.
- ❖ Together, please discuss your ideas for a draft lesson which you could potentially teach to your current population of students.
 - Someone in the group should volunteer to write all ideas into a google document (docs or slides) which can be shared (think of this role as a minute taker).
 - Someone should volunteer as the Presenter.
- ❖ The lesson should be based on the seminar conducted by Dr. Krasner, with an attempt to incorporate literature from the readings provided to you.

Directions for Teacher Group Activity

- ❖ Discuss the most important aspects of the seminar and what information you believe is imperative for middle or high school students to learn. Center your lesson on the essential question: are we experiencing a constitutional crisis?
- ❖ Create an **introduction** to your lesson. What would be a good way to entice students to provide their prior knowledge on the topics we have discussed during the seminar?
- ❖ Design a **main lesson** whereby students will work in groups to discuss, debate, analyze and evaluate information from sources related to the first 4 months of the Trump administration. How will the students provide their **evaluation**? Explain what materials you are likely to use during the lesson.
- ❖ Be prepared to discuss your ideas for a lesson with the seminar participants. Choose a spokesman if necessary.



BREAKOUT ROOMS

- 1) Develop a Brief Lesson Plan
- 2) Present to Attendees After Reconvening

Next Steps for Stipend

❖ Qualifying for 1st Stipend:

- Participate actively in today's session, including plan in Breakout Room
- Provide mailing address in response to follow-up email sent by Dr. Krasner

❖ Qualifying for 2nd Stipend:

- Write the lesson in more detail
- Teach it to a class before May 28th (if this timing doesn't work, we can make other arrangements)
- Submit a written evaluation (can be brief, 1-2 pages)
 - In writing (to makrasner@gmail and dmclean5@schools.nyc.gov)
 - And attend a seminar on Zoom on May 28th, 6-8 pm to discuss with others



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